

RECEIPT # 52716
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UNITED STATES DISTRICT COURT
 FOR THE
 DISTRICT OF MASSACHUSETTS

FILED
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 2003 DEC 24 A 11:09
 U.S. DISTRICT COURT
 DISTRICT OF MASS.

SUSAN GALE,
 Plaintiff

VS.

UNUM LIFE INSURANCE COMPANY,
 Defendant

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CIVIL ACTION

NO.

MAGISTRATE JUDGE Cohen

03 CV 12601 RGS

COMPLAINT AND DEMAND FOR JURY TRIAL

1. The Plaintiff, Susan Gale, is an individual with a resident address of 15 Foundry Street, South Easton, Massachusetts.
2. The Defendant, UNUM Life Insurance Company (hereinafter "UNUM"), is upon information and belief a foreign corporation duly organized under the laws of the State of Nevada, with a principal place of business at 2211 Congress Street, Portland, Maine; and having as its resident agent for service of process, CT Corporation System, 101 Federal Street, Boston, Massachusetts.
3. Jurisdiction of this Honorable Court is based upon diversity of citizenship, amount in controversy and federal question under the Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1001, et. seq.

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4. On or about January 12, 1997, Susan Gale was the beneficiary of a Group Insurance Policy No. 367097 between UNUM and Northeast Theatre Corporation, which policy provided for Long Term Disability benefits.
5. On or about January 12, 1997, Susan Gale became totally disabled from her employment as the result of a traumatic blow to the head, which disability has remained constant from said date to the present.
6. Thereafter, Susan Gale applied for Long Term Disability benefits under the aforementioned Group Insurance Policy issued by the Defendant, UNUM, seeking benefits from her eligibility date following her injury and continuing.
7. Thereafter, UNUM paid Long Term Disability benefits to the Plaintiff, Susan Gale, under the aforementioned policy covering the Plaintiff through December 10, 2001.
8. Subsequent to December 10, 2001, the Defendant, UNUM, discontinued the Plaintiff's Long Term Disability benefits, alleging that the Plaintiff was no longer eligible for said benefits due to a "24 month mental illness cap" set forth in the aforementioned policy.
9. At all times material hereto, the Plaintiff, Susan Gale, has continued to suffer from a physical disability brought on by trauma to the head in a slip and fall on ice on or about January 12, 1997.

10. At all times material hereto, said policy covering Plaintiff provides Long Term Disability benefits for the physical injuries resulting in the Plaintiff's continued disability.
11. In basing its denial of the claimant's claim for Long Term Disability benefits on the aforementioned reasons setout herein, the Defendant, UNUM, acted arbitrarily, capriciously and in violation of the law by intentionally misinterpreting the policy language, and willfully misrepresenting said policy language to the claimant, Susan Gale.
12. Moreover, in misinterpreting the policy language as setout herein, and in misrepresenting said policy language to the claimant so as to exclude the Plaintiff from Long Term Disability benefits, the Defendant, UNUM, has also acted fraudulently so as to deprive the Plaintiff of Long Term Disability benefits to which she is entitled.
13. The actions on the part of the Defendant, UNUM, in wrongfully denying the claimant's claim, constitute an intentional and willful breach of the Group Insurance Policy under which the claimant, Susan Gale, is an intended beneficiary, and as such, constitute a breach of contract on the part of the Defendant, UNUM.

COUNT I
(Breach of Contract)

14. The Plaintiff, Susan Gale, repeats, reavers and realleges paragraphs 1 through 13, as if fully set out herein, and expressly makes them part of Count I.

15. As a result of the actions of the Defendant, UNUM, which actions constituted a breach of contract as set forth herein, the Plaintiff, Susan Gale, has been, and continues to be, deprived monies by way of Long Term Disability benefits to which she is rightfully entitled.

WHEREFORE, the Plaintiff, Susan Gale, demands judgment against the Defendant, UNUM Life Insurance Company, in an amount sufficient and proper to compensate her for such losses, together with interest and costs of this action.

COUNT II
(Fraud)

16. The Plaintiff, Susan Gale, repeats, reavers and realleges paragraphs 1 through 15, as if fully set out herein, and expressly makes them part of Count II.

17. As set forth above, the actions on the part of the Defendant, UNUM, in wrongfully classifying the Plaintiff's disability as a "mental illness", constitute fraud on the part the Defendant, UNUM, its agents, servants and/or employees.

18. As a result of the fraudulent actions of the Defendant, UNUM, which actions constituted a breach of contract as set forth herein, the Plaintiff, Susan Gale, has been deprived of monies to which she is otherwise rightfully entitled.

WHEREFORE, the Plaintiff, Susan Gale, demands judgment against the Defendant, UNUM Life Insurance Company, in an amount sufficient and proper to compensate her for such losses, together with interest and costs of this action.

COUNT III
(Intentional Misrepresentation)

19. The Plaintiff, Susan Gale, repeats, reavers and realleges paragraphs 1 through 18, as if fully set out herein, and expressly makes them part of Count III.
20. As set forth above, the actions on the part of the Defendant, UNUM, in intentionally misrepresenting to the Plaintiff that her disability is "psychological" in nature, and therefore no longer covered under the subject Group Insurance policy, constitute fraud on the part the Defendant, UNUM, its agents, servants and/or employees.
21. As a result of the intentional misrepresentations of the Defendant, UNUM, which intentional misrepresentations constitute a breach of contract as set forth herein, the Plaintiff, Susan Gale, has been deprived of monies to which she is otherwise rightfully entitled.

WHEREFORE, the Plaintiff, Susan Gale, demands judgment against the Defendant, UNUM Life Insurance Company, in an amount sufficient and proper to compensate her for such losses, together with interest and costs of this action.

COUNT IV
(Violation of ERISA, 29 U.S.C. secs. 1001-1461)

22. The Plaintiff, Susan Gale, repeats, reavers and realleges paragraphs 1 through 21, as if fully set out herein, and expressly makes them part of Count IV.
23. At all times material hereto, the actions and decisions on the part of the Defendant, UNUM, as Plan Administrator, in classifying the Plaintiff's disability as "psychological" in nature and in discontinuing the Plaintiff's Long Term Disability benefits, were arbitrary and capricious and wholly unsupported by the evidence.
24. Moreover, at all times material hereto, the Defendant, UNUM, as Plan Administrator, acted fraudulently and with the intent to misrepresent the Long Term Disability policy provisions covering the Plaintiff.
25. As a result of the arbitrary and capricious nature of the actions and decisions on the part of the Defendant, UNUM, its agents, servants and/or employees, as well as the fraudulent and intentional misrepresentations related thereto, all in violation of the Employee Retirement Income Security Act of 1974 (29 U.S.C. secs. 1101-1461), the

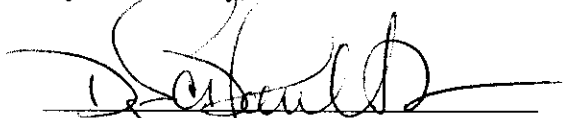
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Plaintiff, Susan Gale, has been deprived of Long Term Disability benefits to which she is otherwise rightfully entitled.

WHEREFORE, the Plaintiff, Susan Gale, demands judgment against the Defendant, UNUM Life Insurance Company, in an amount sufficient and proper to compensate her for such losses, together with interest, costs, punitive damages and reasonable attorney's fees, all as provided under the Employee Retirement Income Security Act of 1974 (29 U.S.C. secs. 1101-1461).

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS
AND ISSUES SO TRIABLE**

Respectfully submitted,
For the Plaintiff, Susan Gale
By her attorney,



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DATED: December 18, 2003